IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 16, 2007 Session

ARTHUR CREECH and wife, GLENDA CREECH, CLAUDE HATFIELD and wife, DEBORAH HATFIELD, WAYNE MARTIN and wife, ALICE MARTIN, BRENT CHITWOOD and MARVIN B. CHITWOOD, JR., d/b/a TRIAD PARTNERS, DARLENE REINIER , VICKI JACOBS, JOANN L. (MADDY) WOLFE, LAUREL GROUP, INC., and GOLDEN GIRLS, INC., v. ROBERT R. ADDINGTON, et al., including D.C. PARKER and RICHARD FLOWERS

Direct Appeal from the Circuit Court for Sevier County
No. 97-16-II Hon. Richard R. Vance, Circuit Judge

No. E2006-01911-COA-R3-CV - FILED AUGUST 29, 2007

The Trial Court affirmed jury verdicts returned in favor of the Plaintiffs on the grounds that agents of the non-resident Defendants had made false representations to Plaintiffs at a meeting in Gatlinburg, Tennessee. On appeal, we affirm the Trial Court's Judgment as to the Plaintiffs attending the meeting in Gatlinburg, but grant a new trial as to the Plaintiffs not in attendance at the meeting.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part, Reversed in Part, and remanded.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and SHARON G. LEE, J., joined.

Rick L. Powers and Dan D. Rhea, Knoxville, Tennessee, for appellants D.C. Parker and Richard Flowers.

David H. Parton, Gatlinburg, Tennessee, for appellees.

OPINION

Background

The Plaintiffs in this case are Arthur Creech and wife, Glenda Creech;[1] Claude Hatfield and wife, Deborah Hatfield;[2] Wayne Martin and wife, Alice Martin;[3] Brent Chitwood and Marvin B. Chitwood, Jr., d/b/a Triad Partners;[4] Darlene Reinier;[5] Vicki Jacobs; Joann L. (Maddy) Wolfe;[6] Laurel Group, Inc.;[7] and Golden Girls, Inc.[8]

In October 1993, some of the Plaintiffs[9] attended a meeting at the Laurel Inn in Gatlinburg, Tennessee. At this meeting, Lloyd and Betty Link[10] made a presentation regarding real estate investment opportunities in Tunica, Mississippi. H. Earl Allen, III, a manager at the Laurel

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[1]Arthur and Glenda Creech were at all relevant times residents of North Carolina.

[2]Claude and Deborah Hatfield were at all relevant times residents of Ohio.

[3]Wayne and Alice Martin were at all relevant times residents of Ohio.

[4]Brent Chitwood and Marvin B. Chitwood, Jr. were at all relevant times residents of South Carolina. Triad Partners is a general partnership organized under the laws of the State of South Carolina.

[5]Darlene Reinier was at all relevant times a resident of Tennessee.

[6]Vicki Jacobs, and Joann L. (Maddy) Wolfe were at all relevant times residents of Ohio.

[7]Laurel Group, Inc. is an administratively dissolved Mississippi corporation. The owners of Laurel Group, Inc. included Arthur Creech, Claude Hatfield, and Wayne Martin. Laurel Group, Inc. was incorporated in November 1993.

[8]Golden Girls, Inc. is an administratively dissolved Mississippi corporation. The owners of Golden Girls, Inc. included Darlene Reinier, Vicki Jacobs, and Joann L. (Maddy) Wolfe. Golden Girls, Inc. was incorporated in November 1993.

[9]The Plaintiffs who attended this meeting are Darlene Reinier, Vicki Jacobs, Joann L. (Maddy) Wolfe, and Arthur and Glenda Creech.

[10]Lloyd and Betty Link were at all relevant times residents of Tennessee.

Inn, invited these Plaintiffs to the presentation and introduced them to the Links. [11] Plaintiffs claim that H. Earl Allen, III is a resident of Tennessee.

During the presentation, the Links discussed a number of casino barges operating on the Mississippi River and docked on land owned by D.C. Parker and Richard B. Flowers.[12] The presentation included a master plan to develop "Mhoon Landing," a resort development with hotels, restaurants, theaters, and other recreational facilities, on the land surrounding the casinos.

The Links represented that the casinos had long-term leases at the Mhoon Landing site and that G.E. Capital Modular Space ("G.E. Capital")[13] would provide financing for the construction of multi-million dollar hotels. The Links promised that hotel construction would begin immediately if the Plaintiffs purchased or leased land owned by Mr. Parker and Mr. Flowers. The Links also claimed that the only way to purchase or lease the land was through them and that other potential investors would take the deal if the Plaintiffs did not move quickly.

As a result of this presentation, Arthur Creech, Darlene Reinier, Vicki Jacobs, and Joann L. (Maddy) Wolfe executed documents purporting to be contracts of sale for commercial real estate and provided down payments.[14] The documents listed D.C. Parker and Richard B. Flowers as the sellers, but they did not sign the documents. The documents also listed Links & Associates, Inc. as the sellers' escrow agent. Although the documents are labeled as contracts for the sale of land, everyone understood that this would be a lease transaction. In conjunction with these

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[11]The Plaintiffs claim that H. Earl Allen, III is a resident of Tennessee.

[12]D.C. Parker and Richard B. Flowers were at all relevant times residents of Mississippi.

[13]The Plaintiffs claim that G.E. Capital a/k/a Transport International Pool, Inc. (the "G.E. Companies") is a Pennsylvania corporation registered with the Tennessee Secretary of State. The Plaintiffs allege that G.E. Capital entered into an agreement with Robert Addington, John Freeman, and Consolidated Technologies Corp. ("Consolidated"), whereby G.E. Capital would finance all projects selected by Mr. Addington, Mr. Freeman, and Consolidated in Mississippi. In return, Mr. Addington, Mr. Freeman, and Consolidated would provide G.E. Capital with customers and developed projects for financing which Addington would personally guarantee. The Plaintiffs also aver that the Links were acting as agents of Mr. Addington, Mr. Freeman, Consolidated, G.E. Capital, Mr. Parker, and Mr. Flowers during the time period at issue. The Plaintiffs further allege that Mr. Freeman is a resident of Alabama, Mr. Addington is a resident of Kentucky, and Consolidated is a Kentucky corporation which is not domesticated in Tennessee.

[14]Mr. Creech signed on behalf of Laurel Group, Inc. Laurel Group, Inc. did not become a corporation until November 1993, when Earl Allen, acting as incorporator, filed the articles of incorporation. Darlene Reinier, Vicki Jacobs, and Joann L. (Maddy) Wolfe signed on behalf of Golden Girls, Inc. Golden Girls was not a corporation at that time. It was not incorporated until November 1993, when Earl Allen, acting as incorporator, filed the articles of incorporation.

documents, Darlene Reinier, Vicki Jacobs, and Joann L. (Maddy) Wolfe collectively paid $25,000.00 to the Links, and Mr. Creech paid $25,000.00. The Plaintiffs who did not attend the presentation learned of the Mhoon Landing project from Mr. Link, Mr. Allen, or from other Plaintiffs.[15]

In November 1993, several of the Plaintiffs[16] traveled to Tunica to view the development site. The Plaintiffs claim to have met Mr. Flowers, Mr. Link, and Ellis Darby.[17] Mr. Darby allegedly discussed the progress of construction at the site and plans for new casinos, a convention center, theaters, an expanded airport, roads, and sewage systems. Mr. Link allegedly showed them the parcels set aside for hotel construction and assured them that construction financing was in place.

In December 1993, Claude Hatfield, Wayne Martin, and Earl Allen attended a closing at Tunica. Mr. Allen attended as president of both Golden Girls, Inc. and Laurel Group, Inc. Mr. Flowers, Mr. Darby, and the Links also attended the closing. Mr. Link allegedly represented that Mhoon Landing would be built as planned and that construction financing was in place.

At the closing, Earl Allen executed two leases—one on behalf of Golden Girls, Inc. and another on behalf of Laurel Group, Inc., as lessees. Mr. Flowers and Nancy Arnold, Mr. Parker's attorney-in-fact, also signed the leases, as lessors. The leases each had an initial term of twenty years, but the lessors could terminate either lease if the lessees failed to construct a hotel within the first six months of the term. Golden Girls, Inc. and Laurel Group, Inc. each paid $125,000.00 to lease the two properties, and the lessors acknowledged receipt of these amounts in the lease documents. However, Mr. Parker and Mr. Flowers claim that they received only $100,000.00 for each lease. The Defendants also claim that the Links were not their agents, but they had an understanding that if the Links found lessees willing to pay more that $100,000.00 to lease each parcel, the Links could keep the excess. The Links retained the extra $25,000.00 on each lease.

Apparently, the guaranteed construction financing never materialized. In addition, the casino barges relocated.[18] The Plaintiffs attempted to secure financing from another source, but failed, and the Plaintiffs never built hotels on the leased parcels, and the lessors terminated the leases.

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[15]Brent Chitwood first learned of the Mhoon Landing development from Earl Allen and Lloyd Link prior to October 1993. Claude Hatfield first learned of the development from Earl Allen in September 1993. Wayne Martin learned of the project from Claude Hatfield.

[16]Darlene Reinier, Vicki Jacobs, Joann L. (Maddy) Wolfe, Brent Chitwood, Wayne Martin, Claude Hatfield, and Glenda Creech all traveled to Tunica in November 1993.

[17]Ellis Darby was at all relevant times Mr. Parker's employee.

[18]The casinos all had the right to relocate with thirty days notice.

On January 7, 1997, the Plaintiffs filed a Complaint against Robert R. Addington; John O. Freeman; Consolidated Technologies Corp. ("Consolidated"); G.E. Capital, a/k/a Transport International Pool, Inc. (the "G.E. Companies"); D.C. Parker; Richard B. Flowers; Lloyd Link and wife, Betty Link, a/k/a Link & Associates (the "Links"); and H. Earl Allen, III. The Complaint alleged that the Defendants breached oral and written contracts with the Plaintiffs by failing to finance construction of the two hotels. The Plaintiffs sought both compensatory and punitive damages.

In February, the G.E. Companies, Mr. Addington, Mr. Freeman, and Consolidated filed motions for more definite statements. Also in February, the Links filed an Answer generally denying the Plaintiffs' allegations and asserting a number of affirmative defenses. The Links argued they had acted as agents of disclosed principals and never acted outside the scope of their authority; and could not be held personally liable.

In March, Mr. Parker and Mr. Flowers also answered generally denying the Plaintiffs' allegations and asserting a number of affirmative defenses. These Defendants argued that the Links were not their agents, they contested the Circuit Court's jurisdiction over the case, and they relied upon the statute of frauds.

In June, the G.E. Companies filed a motion to dismiss. These Defendants argued that the Plaintiffs' claim against them should be dismissed pursuant to the statute of frauds—T.C.A. § 29–2–101—because the Plaintiffs were unable to produce a writing signed by the party to be bound. The Links joined this motion.

In November, the Plaintiffs filed a Motion to amend their Complaint, the amendment to include copies of the contracts which Arthur Creech, Darlene Reinier, Vicki Jacobs, and Joann L. (Maddy) Wolfe signed at the October 1993 presentation. The amendments also included copies of correspondence between the Parties regarding financing. The Plaintiffs also asserted that the Defendants were estopped from relying on the statute of frauds.

In January 1998, the G.E. Companies supplemented their motion to dismiss with various exhibits including affidavits and deposition transcripts. On January 22, 1998, the Trial Court held a hearing on the motions, and granted Plaintiffs' motion to amend their complaint, but declined to consider the G.E. Companies' supplemental exhibits. Based upon the exhibits attached to the Amended Complaint, the Circuit Court held there was no written commitment to finance construction, and concluded that the Amended Complaint did not satisfy the statute of frauds. On February 5, 1998, the Court entered an order denying the G.E. Companies' request to convert their motion to dismiss into a motion for summary judgment, but granted the G.E. Companies' motion to dismiss and the Link Group's motion to dismiss.

The remaining Defendants, with the exception of Mr. Allen, filed motions for summary judgment, and in a hearing on these motions, the Circuit Court stated that the central theme of the case was whether misrepresentations were made regarding construction financing. The Court

found that there was no evidence that Mr. Parker and Mr. Flowers misrepresented anything with respect to the financing. Regarding the other Defendants, the Court found disputes of material fact regarding what these Defendants knew about the Links' representations, and the Court provided Plaintiffs with additional time to amend their complaint. In January 2001, the Circuit Court entered an order granting summary judgment in favor of Mr. Parker and Mr. Flowers and denying summary judgment as to the other Defendants.

In February 2001, the Court entered an order stating that the Plaintiffs reached a settlement agreement with Mr. Addington, Mr. Freeman, and Consolidated. An Order was entered dismissing the Plaintiffs' claims against these Defendants.

In 2003, the Circuit Court entered an order stating that Plaintiffs reached a settlement agreement with Mr. Allen, and Allen was dismissed from the suit with prejudice.

Subsequently, the Plaintiffs filed a notice of appeal regarding the Circuit Court's grant of summary judgment in favor of Parker and Flowers, and this Court filed an opinion in January 2004, finding that the Circuit Court failed to address the Plaintiffs' claim that the Links were the agents of Mr. Parker and Mr. Flowers and that Mr. Parker and Mr. Flowers were liable for their agents' misrepresentations. *Creech v. Addington*, No. E2003-00842-COA-R3-CV, slip op. (Tenn. Ct. App. Jan. 7, 2004). The summary judgment was vacated and the case remanded for further proceedings. *Id.*

Upon remand, Parker and Flowers filed a motion for summary judgment, arguing that Plaintiffs' right of action for misrepresentation against the Link Group had been extinguished by operation of law through the doctrine of res judicata; therefore, they could not be held vicariously liable for the Link Group's alleged misrepresentations, in that the Court did not have subject matter jurisdiction. In response, the Circuit Court concluded that Defendants' motion for summary judgment was premature because a "factual resolution of the question of the Links' alleged agency for these defendants was required before the res judicata issue could be resolved."

Subsequently, the Plaintiffs amended their Complaint, adding a cause of action for fraudulent misrepresentation.

The Trial

In May 2006, the Circuit Court conducted a jury trial, and the jury returned a special verdict and found that the Links were the agents of Mr. Parker and Mr. Flowers when the Links made their October 1993 presentation in Gatlinburg. The jury also found that during the presentation the Links intentionally made false statements of fact, and that one or more of the Plaintiffs justifiably relied upon these false statements. On May 18, 2006, the Circuit Court entered a judgment against Mr. Parker and Mr. Flowers and awarded damages to the Plaintiffs.

On May 24, Mr. Parker and Mr. Flowers filed a motion to alter and amend the judgment, arguing that they could not be found vicariously liable for the Links' actions because the doctrine of res judicata protected the Links from liability for fraudulent misrepresentation. The Trial Court denied Defendants' Motion, and Defendants .filed a timely Notice of Appeal

Summary of Issues on Appeal

A. Whether principles of agency law shield the Defendants from liability.

B. Whether the special verdict was sufficiently defective to warrant a new trial.

C. Whether the Circuit Court had in personam jurisdiction over the Defendants with regard to the claims of Claude and Deborah Hatfield, Wayne and Alice Martin, and Brent and Marvin Chitwood.

D. Whether the jury improperly applied a rescission-of -contract theory.

Discussion of the Issues

"[I]n reviewing a judgment based upon a jury verdict the appellate courts are not at liberty to weigh the evidence or to decide where the preponderance lies, but are limited to determining whether there is material evidence to support the verdict . . . ." *Crabtree Masonry Co., Inc. v. C & R Const., Inc.*, 575 S.W.2d 4, 5 (Tenn. 1978). The trial court interpretation of the law is reviewed *de novo* with no presumption of correctness. *Brown v. Wal-Mart Discount Cities*, 12 S.W.3d 785, 787 (Tenn. 2000).

On February 5, 1998, as noted, the Circuit Court entered an order granting the Links' motion to dismiss, and Defendants argue that the order was an adjudication of the Links' non-liability for fraudulent misrepresentation, and that they cannot be held vicariously liable for the Links' fraudulent misrepresentations.

The Tennessee Supreme Court has clearly held that a principal may not be held vicariously liable under the doctrine of respondeat superior for the acts of its agent "when the agent has been exonerated by an adjudication of non-liability." *Johnson v. LeBonheur Children's Medical Center*, 74 S.W.3d 338, 345 (Tenn. 2002). As to the Links, there was never an adjudication of non-liability for fraudulent misrepresentation.

When the Court granted the Links' motion to dismiss, the Plaintiffs' only claim against the Links was for breach of contract, and the Links were dismissed from the law suit based upon the statute of frauds on February 5, 1998. The issue of misrepresentation arose when the

Plaintiffs' amended their Complaint to add fraudulent misrepresentation in October 2005. The Defendants' attorney admitted as much before the Trial Court: "Your Honor, you recall back in October of last year [2005], we had a hearing on [the Plaintiffs'] motion to amend, at which time [the Plaintiffs] added to [their] complaint the only misrepresentation allegations in the complaint." Accordingly, the issue of fraudulent misrepresentation was not before the Circuit Court when the Links were dismissed from the action, and the issue was therefore not adjudicated as to the Links. Once the action was amended, Plaintiffs could pursue their claim against the Links' principals, under theory of respondeat superior, despite the absence of the Links as parties. *Rankhorn v. Sealtest Foods*, 479 S.W.2d 649, 652 (Tenn. Ct. App. 1971).

The Defendants argue the Court's dismissal order triggered the doctrine of res judicata which would prevent the Plaintiffs from asserting a claim for fraudulent misrepresentation against the Links, and argued that they cannot be held vicariously liable because the doctrine of res judicata protects the Links from liability. Thus, the issue becomes whether the Court's Order triggered the doctrine of res judicata.

Res judicata "bars a second suit between the same parties or their privies on the same cause of action with respect to all the issues which were or *could have been litigated* in the former suit." *Young v. Barrow*, 130 S.W.3d 59, 64 (Tenn. Ct. App. 2003).

Res judicata "'does not prevent a re-examination of the same question between the same parties where in the interval the facts have changed or new facts have occurred which may alter the legal rights or relations of the litigants.'" *Banks v. Banks*, 77 S.W.2d 74, 76 (Tenn. Ct. App. 1934); *accord White v. White*, 876 S.W.2d 837, 839–40 (Tenn. 1994). The res judicata effect of a judgment "extends to all matters material to the decision of the case which the parties exercising reasonable diligence might have brought forward at the time." *Collins v. Greene County Bank*, 916 S.W.2d 941, 946 (Tenn. Ct. App. 1995); *accord State ex rel. French v. French*, 188 S.W.2d 603, 605 (Tenn. 1945); *McKinney v. Widner*, 746 S.W.2d 699, 705 (Tenn. Ct. App. 1987).

The Trial Court's order dismissing the Links from the suit was not subject to the res judicata doctrine, because it was not final for that purpose. When the Trial Court entered its dismissal on February 5, 1998, the Court had not adjudicated claims against the remaining Defendants. *Dunlap v. Dunlap*, 996 S.W.2d 803, 808 (Tenn. Ct. App. 1998) ("A final judgment is one which adjudicates all the claims, rights, and liabilities of all the parties."). The Trial Court did not adjudicate all the claims, rights, and liabilities of all the parties until January 2, 2003, and that adjudication was appealed and this Court vacated the grant of summary judgment in favor of Parker and Flowers. "'After a judgment has been vacated or reversed, its effect as res judicata is at an end . . . .'" *Merchants & Mfrs. Transfer Co. v. Johnson*, 403 S.W.2d 106, 107 (Tenn. Ct. App. 1966). Following remand, the case proceeded to a trial and judgment, which the Defendants appealed. Thus, the order of dismissal never acquired res judicata effect. *McBurney v. Aldrich*, 816 S.W.2d 30, 34 (Tenn. Ct. App. 1991) (stating that "a judgment is not final and res judicata where an appeal is pending" and "[w]here the former suit is still pending, a judgment rendered therein is not res judicata"). Accordingly, the doctrine of res judicata has not extinguished the Plaintiffs' right of

action against the agents—i.e., the Links—for fraudulent misrepresentation, and the principles of agency law do not shield the Defendants from vicariously liability.

Next, Defendants argue that the jury's special verdict[19] failed to address central issues regarding the claims of Claude and Deborah Hatfield, Wayne and Alice Martin, and Brent and Marvin Chitwood. The jury's special verdict form reported a number of specific factual findings as follows:

> Question: Were Mr. or Mrs. Lloyd Link the agents of defendants D.C. Parker and Richard Flowers when they [i.e., the Links] made their presentation in Gatlinburg, Tennessee on October 18, 1993?
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> Jury's Response: Yes.
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> Question: Did Mr. or Mrs. Lloyd Link intentionally make false statements of fact for the purpose of misleading one or more of the plaintiffs to rely upon their statements to their detriment, at the Gatlinburg, Tennessee presentation on October 18, 1993?
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> Jury's Response: Yes.
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> Question: Did one or more of the plaintiffs justifiably rely upon the false statements of Mr. or Mrs. Lloyd Link to their detriment?
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> Jury's Response: Yes.
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> Question: List the plaintiffs who relied and the amount of their damages.
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> Jury's Response:

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[19]The jury returned a special verdict, as the document contained a series of fact questions without any general verdict question asking the jury to ultimately find for one side or the other. The Tennessee Supreme Court described the difference between a special verdict and a general verdict accompanied by special interrogatories as follows: "A special verdict is in lieu of a general verdict, and must find all the ultimate facts in issue, in order to form the basis of the judgment to be rendered. But special issues or interrogatories are put to the jury to elicit their answers *to accompany their general verdict* for the purpose of ascertaining the basis of that verdict and testing its consistency with such answers." *Harbison v. Briggs Bros. Paint Mfg. Co.*, 354 S.W.2d 464, 469 (Tenn. 1962) (alteration in original), *rev'd on other grounds*, *Ennix v. Clay*, 703 S.W.2d 137, 139 (Tenn. 1986). "The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact." Tenn. R. Civ. P. 49.01 (2005). General verdicts are no longer constitutionally mandated. *Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694, 714 (Tenn. Ct. App. 1999).

1. Arthur Creech and wife Glenda Creech $67,500.00
2. Claude Hatfield and wife Deborah Hatfield $47,500.00
3. Brent Clintwood and Marvin Clintwood d/b/a Triad Partners $87,500.00
4. Darlene Reinier $85,000.00
5. Vickie Jacobs $85,000.00
6. Joann L. Wolf $85,000.00
7. Wayne and Alice Martin $47,500.00

The findings of this verdict focus upon the Links' conduct during their presentation in Gatlinburg on October 18, 1993. The special verdict does not address whether the Links acted as the Defendants' agents outside of this presentation. It does not address whether the Links made fraudulent misrepresentations outside of this presentation. The verdict fails to expressly address whether all the Plaintiffs attended the October 1993 presentation. These omissions are significant because the record contains no evidence that the Hatfields, the Martins, and Brent and Marvin Chitwood attended the Links' October presentation in Gatlinburg. On the contrary, Brent Chitwood, Claude Hatfield, and Wayne Martin all testified that they did not attend this presentation. To the extent the special verdict implicitly finds that the Hatfields, the Martins, and Brent and Marvin Chitwood attended the October 1993 presentation or directly relied upon the fraudulent misrepresentations which the Links made at this presentation, are not supported by the evidence and must be set aside. T.R.A.P. 13(d).

While these Plaintiffs did not attend the Links' October 1993 presentation, the special verdict does not address whether the misrepresentations made at this presentation were indirectly communicated to these Plaintiffs or whether the Links directly communicated fraudulent misrepresentations to these Plaintiffs on a separate occasion. Moreover, if the Links did make separate misrepresentations to these Plaintiffs outside of the October 1993 presentation, the verdict does not address whether the Links made such fraudulent misrepresentations as agents of the Defendants because the verdict's agency finding is limited to the October 1993 presentation. Accordingly, the verdict fails to address issues that are central to the claims of the Hatfields, the Martins, and Brent and Marvin Chitwood. "A new trial is . . . warranted when [special] verdict forms are composed in such a faulty fashion that they do not address each of the plaintiffs' theories of recovery and do not allow the jury to adequately respond to each claim." *Concrete Spaces, Inc. v. Sender*, 2 S.W.3d 901, 911 (Tenn. 1999) (ordering a new trial because the special verdict form failed to address a number of central issues). We hold that a new trial is warranted with regard to the claims of Claude and Deborah Hatfield, Wayne and Alice Martin, and Brent and Marvin Chitwood, but the verdict's defects do not affect the Circuit Court's judgment with regard to the other Plaintiffs—Arthur and Glenda Creech, Darlene Reinier, Vicki Jacobs, Joann L. (Maddy) Wolfe—as the verdict form properly allowed the jury to adequately respond to these Plaintiffs' claims.

The Defendants further argue the Circuit Court did not have *in personam* jurisdiction over the Defendants with regard to the claims of Claude and Deborah Hatfield, Wayne and Alice Martin, and Brent and Marvin Chitwood. Plaintiffs, however, argue that the Circuit Court does have

"specific" [20] *in personam* jurisdiction over these Defendants, and assert jurisdiction pursuant to T.C.A. § 20–2–214, which in relevant part provides,

> (a) Persons who are nonresidents of Tennessee and residents of Tennessee who are outside the state and cannot be personally served with process within the state are subject to the jurisdiction of the courts of this state as to any action or claim for relief arising from:
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> (1) The transaction of any business within the state;
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> (2) Any tortious act or omission within this state;
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> . . . .
>
> (6) Any basis not inconsistent with the constitution of this state or of the United States;
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> . . . .
>
> (c) Any such person shall be deemed to have submitted to the jurisdiction of this state who acts in the manner above described through an agent or personal representative.

T.C.A. § 20–2–214(a), (c) (1994). "This statute reaches as far as the Due Process Clause of the Fourteenth Amendment permits; consequently, the issue is whether the assertion of in personam jurisdiction is consistent with due process." *J.I. Case Corp. v. Williams*, 832 S.W.2d 530, 531

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[20] Courts recognize two forms of *in personam* jurisdiction—specific jurisdiction and general jurisdiction.

> General jurisdiction is exercised over a nonresident defendant in a suit that does not arise out of or relate to the contacts with the forum state but rather the defendant's contacts with the forum state are so "continuous and systematic" that jurisdiction is proper. *Helicopteros* 466 U.S. at 414 n. 9, 104 S.Ct. 1868; *International Shoe,* 326 U.S. at 317, 66 S.Ct. 154; *see also Shoney's*, 922 S.W.2d at 537. Specific Jurisdiction is exercised over a defendant in a suit that directly arises out of or relates to one or more contacts that the defendant has with the forum. *Helicopteros,* 466 U.S. at 414 n. 8, 104 S.Ct. 1868.

Gregurek v. Swope Motors, Inc., 138 S.W.3d 882, 885 (Tenn. Ct. App. 2003). There is no evidence that the Defendants had contact with Tennessee outside the events at issue; therefore, the Circuit Court's *in personam* jurisdiction, if any, must be specific. *Shoney's, Inc. v. Chic Can Enterprises, Ltd.*, 922 S.W.2d 530, 537 (Tenn. Ct. App. 1995).

(Tenn. 1992).

The fundamental test is "whether the defendant purposefully established 'minimum contacts' in the forum." *Burger King Corp. V. Rudzewicz,* 471 U.S. 462, at 474 (1985). "'The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.'" *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

The Tennessee Supreme Court has prescribed five factors to consider when determining whether the requisite minimum contacts are present: (1) "the quantity of the contacts," (2) "their nature and quality," (3) "the source and connection of the cause of action with those contacts," (4) "the interest of the forum state," and (5) "convenience." *J.I. Case Corp.*, 832 S.W.2d at 532; *accord Masada Inv. Corp. v. Allen*, 697 S.W.2d 332, 334 (Tenn. 1985). All five factors need not be present in substantial degree for minimum contacts to be present. *Shelby Mut. Ins. Co. v. Moore,* 645 S.W.2d 242-246 (Tenn. Ct. App. 1981).

The Defendants' argue that these parties did not deserve a forum for their claims in this state because they did not have a sufficient relationship with Tennessee. The focus, however, of the minimum contacts due process analysis is not the Plaintiffs' relationship to the forum, but the relationship between the forum and the non-resident Defendants—Mr. Parker and Mr. Flowers. *Burger King Corp.*, 471 U.S. at 474–75. While neither Defendant was physically present in Tennessee, jurisdiction may not be avoided merely because the Defendants did not enter the State. *Id.* at 476. The Plaintiffs' argument focuses on the Links' relationship to Tennessee and assumes the Links were acting as the Defendants' agents during all of the Links' interactions with all of the Plaintiffs.

Although an agent's contacts to the forum are imputed to an non-resident principal,[21] the jury's special verdict only reported that the Links were "the agents of the defendants D.C. Parker and Richard Flowers when they [the Links] made their presentation in Gatlinburg, Tennessee on October 18, 1993." As we have noted, these parties did not attend the presentation, and the special verdict does not address whether the Links acted as the Defendants' agents outside the presentation or whether the misrepresentations made at the presentation were indirectly communicated to these Plaintiffs. Until these issues are fully determined, the quantity and quality of the Defendants' contacts with Tennessee cannot be fully determined. These issues of agency and reliance also significantly influence the degree of connection between the Defendants' contacts with Tennessee and the claims of these parties. On remand and after the Circuit Court has determined the scope of the Links' agency and the nature of their representations to these Plaintiffs, the Court should determine whether the scope of Tennessee's specific *in personam* jurisdiction over Defendants is sufficiently broad to embrace the claims of these parties.

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[21]T.C.A. § 20–2–214 (c) (1994) ("Any such person shall be deemed to have submitted to the jurisdiction of this state who acts in the manner above described through an agent or personal representative.").

Finally, the Defendants claim the dollar amounts of the jury's damage awards evidence an intent to award damages based upon an equitable rescission-of-contract theory, and argue that the Plaintiffs did not pursue equitable rescission. The Trial Court did not instruct the jury on principles of rescission, and the verdict form never mentioned rescission. While the Defendants' argument question the award of damages because they closely resemble rescission relief, this issue is not properly before us, because Defendants neither specifically stated this grievance in their motion for a new trial nor designated this as an issue in their statement of the issues. T.R.A.P. 3(e) (2005); *Childress v. Union Realty Co., Ltd.*, 97 S.W.3d 573, 578 (Tenn. Ct. App. 2002) ("We consider an issue waived where it is argued in the brief but not designated as an issue.").

We affirm the Judgments of the Trial Court in favor of Arthur and Glenda Creech, Darlene Reinier, Vicki Jacobs, and Joann L. (Maddy) Wolfe, but vacate the Judgments in favor of Clause and Deborah Hatfield, Wayne and Alice Martin, and Brent and Marvin Chitwood, and remand for a new trial as to these Plaintiffs. The cost of the appeal in our discretion is assessed to D.C. Parker and Richard B. Flowers.

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HERSCHEL PICKENS FRANKS, P.J.